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INTERSTATE COMMERCE COMMISSION

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RECONSTRUCTION AND CONDITIONAL SALE  
AGREEMENT

Dated as of December 1, 1972

among

STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA,

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

L&N INVESTMENT CORPORATION

and

TRUST COMPANY OF GEORGIA,  
as Trustee

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RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT dated as of December 1, 1972, among STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA (hereinafter called the Vendor), LOUISVILLE AND NASHVILLE RAILROAD COMPANY (hereinafter called the Railroad), L & N INVESTMENT CORPORATION (hereinafter called the Builder) and TRUST COMPANY OF GEORGIA (hereinafter called the Vendee), as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Liberty National Bank and Trust Company of Louisville and First Tennessee Leasing Corporation, as Beneficiaries (hereinafter individually called a Beneficiary and together the Beneficiaries).

WHEREAS the Vendee has acquired or will acquire all right, title and interest in certain railroad equipment (hereinafter called the Hulks) pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement) dated as of the date hereof with the Railroad, and will subject the same to a security interest in favor of the Vendor for the purpose of causing the Hulks to be reconstructed; and

WHEREAS the Vendor has acquired or will acquire security title to the Hulks pursuant to a transfer agreement or agreements (hereinafter collectively called the Transfer Agreement) between the Vendor and the Vendee, in substantially the form of Exhibit A hereto, for the purpose of causing the same to be reconstructed as described herein and thereupon selling its interest in the same to the Vendee and the Vendee has agreed to purchase the Hulks so reconstructed (the reconstructed equipment described in Schedule A hereto being hereinafter called the Equipment); and

WHEREAS the Hulks have been or will be delivered to the Builder and the Builder has agreed with the Vendor to cause the Hulks to be reconstructed as required hereby to enable delivery of the Equipment to be made to the Vendee in accordance herewith; and

WHEREAS certain of the obligations of the Vendee under this agreement are limited to the extent provided in Articles 3 and 22 hereof; and

WHEREAS the Vendee and the Railroad are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease), substantially in the form of Exhibit B hereto, leasing the Equipment to the Railroad, subject to this Agreement, which Lease will be filed with the Interstate Commerce Commission

pursuant to Section 20c of the Interstate Commerce Act concurrently with the filing of this Agreement thereunder; and

WHEREAS the Railroad, in order to obtain the use of the Equipment and to induce the Vendor to enter into this Agreement, is willing to guarantee to the Vendor the due and punctual payment of certain sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Builder will cause the Hulks to be reconstructed into the Equipment as described in Schedule A hereto and will deliver the Equipment to the Vendee on behalf of the Vendor and the Vendee will accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be standard gauge railroad equipment reconstructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing by the parties hereto (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The Railroad warrants to the Vendor and the Vendee that the design, quality and component parts of the Equipment will conform, on the date of delivery of each thereof, to all Department of Transportation requirements and specifications, and all standards recommended by the Association of American Railroads, reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the units of the Equipment, on behalf of the Vendor, to the Vendee at such point or points within the United States of America as shall be specified by the Railroad, freight charges, if any, prepaid in accordance with the delivery schedule set forth in Schedule A hereto; provided, however, that the Builder shall have no obligation to deliver any unit of Equipment hereunder if any event of default as defined in Article 15 hereof or any event (including the commencement of any proceeding or the filing of any petition of the nature specified in subparagraphs (c) and (d) of Article 15 hereof) which, with lapse of time, failure to take affirmative action and/or demand, could constitute an event of default hereunder shall have occurred (any such event of default or event being hereinafter called a Default).

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plants, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered and accepted and settled for pursuant to Article 3 hereof on or before June 29, 1973 (hereinafter called the Cut-Off Date), shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. The Vendor and the Vendee shall have no obligation to accept or pay the Builder or the Railroad for any Equipment so excluded from this Agreement but may, in lieu thereof, assign all their right, title and interest therein to the Railroad and the Builder, as their interests may appear, and the Railroad will indemnify and hold harmless the Vendor and the Vendee for any and all claims and liabilities in respect thereof. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph or is not otherwise settled for pursuant to Article 3 hereof (otherwise than due to the failure of the Builder to comply with the provisions thereof contemplated to be complied with by the Builder), the Railroad shall be obligated to accept such equipment and pay the full Purchase Price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, if the Builder and the Railroad shall mutually agree by means of a conditional sale, equipment trust or other appropriate method of financing.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Railroad) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the reconstruction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who

may be an employee of the Railroad) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

ARTICLE 3. Purchase Price and Payment. The cost of the Hulks (the "Hulk Purchase Price") and the estimated base reconstruction cost per unit of the Equipment are set forth in Schedule A hereto. The term "Reconstruction Cost" means the lesser of the estimated base reconstruction cost or the actual cost to the Builder (including reasonable allocation of overhead) of doing the reconstruction work plus a reasonable profit. The term "Purchase Price" as used herein means the sum of the Hulk Purchase Price and the Reconstruction Cost.

For the purpose of settlement therefor, the Equipment shall be divided into not more than three groups of units of the Equipment unless the Vendee, the Vendor and the Builder shall otherwise agree (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date not earlier than March 13, 1973, and not later than the Cut-Off Date, occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Builder by written notice delivered to the Vendee and the Vendor at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, holidays and any other day on which banking institutions in Atlanta, Georgia, or New York, New York, are authorized to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date with respect to each Group an amount equal to 20% of the aggregate Purchase Price of such Group as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices); and

(b) in 20 semiannual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Invoiced Purchase Prices of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid

or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The instalments of the Conditional Sale Indebtedness shall be payable on each May 1 and November 1 commencing May 1, 1974, to and including November 1, 1983, (or, if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at the rate of 7 3/4% per annum, and such interest shall be payable, to the extent accrued, on November 1, 1973, and each Payment Date. The principal amount of the Conditional Sale Indebtedness payable on each of the 20 Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Railrcad promptly after each Closing Date a payment schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest at the rate of 8 3/4% per annum, to the extent legally enforceable, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 6 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate that the Vendee will furnish to the Vendor that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that such portion plus an amount equal to the balance of such Purchase Price shall be paid by the Vendor to the Builder and the Railroad (as the seller of the Hulks), as their interests may appear.

The Vendor shall be under no obligation to make payment to the Builder or the Railroad in respect of a Group unless there shall have theretofore been delivered to the Vendor the following documents, in form and substance satisfactory to it and its special counsel hereinafter mentioned:

(a) the Certificate or Certificates of Acceptance and the Certificate or Certificates of Delivery contemplated by Section 1 of the Lease with respect to the Equipment in such Group;

(b) invoice of the Builder for the reconstruction of the Equipment in the Group and of the Railroad for the Hulks accompanied by or having endorsed thereon the approval of the Vendee of the price stated therein and a certification by the Railroad that the Purchase Price has been calculated as provided in the first paragraph of this Article 3 and does not exceed the price that would be charged by an independent car builder for comparable equipment;

(c) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Vendor, dated as of such Closing Date, stating that (i) this Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (ii) security title to the units of Equipment in such Group is validly vested in the Vendor, free of all claims, liens, security interests and other encumbrances except only the rights of the Vendee under this Agreement, and the rights of the Railroad under the Lease, (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Agreement, (iv) this Agreement and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor hereunder in any State of the United States of America or the District of Columbia (v) registration of this Agreement is not required under the Securities Act of 1933, as amended and (vi) the opinions referred to in subparagraphs (d), (e), (f) and (g) are satisfactory in form and substance and may be relied upon by the Vendor and Messrs. Cravath, Swaine & Moore; and said opinion shall cover such other matters as shall be reasonably requested by the Vendor;

(d) a favorable opinion or opinions of counsel for the Vendee, dated as of such Closing Date, stating that the Trust Agreement, the Transfer Agreement, this Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding instruments enforceable in accordance with their terms;

(e) a favorable opinion of counsel for the Railroad, dated as of such Closing Date, covering the matters referred to in clause (i) of subparagraph (c) in so far as they relate

to the Railroad and clauses (ii) through (iv) of subparagraph (c) and stating that the Railroad is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) a favorable opinion of counsel for the Builder, dated as of such Closing Date, covering the matters referred to in clause (i) of subparagraph (c) in so far as it relates to the Builder and stating that (i) the Builder is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) at the time of delivery of the units of the Equipment in such Group to the Vendor hereunder, such units were free of all claims, liens, security interests and other encumbrances of the Builder or of anyone claiming through the Builder;

(g) an opinion or opinions of counsel for the Vendee or the Beneficiaries, dated on or before the first such Closing Date, stating that the Trust Agreement has been duly authorized, executed and delivered by the Beneficiaries and is a legal and valid instrument binding upon the Beneficiaries and enforceable against the Beneficiaries in accordance with its terms; and

(h) a Certificate of Interest in the amount of payment by the Vendor on the Closing Date in the form of Exhibit C hereto.

Counsel may qualify any opinion as to the enforceability of any instrument by a general reference to bankruptcy, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving its opinion pursuant to subparagraph (c), counsel may rely on the opinion of counsel for the Railroad, the Builder or the Vendee as to all matters of law of jurisdictions other than the United States or the State of New York involved in said opinion and as to authorization, execution and delivery of the documents executed by such parties.

The Vendor shall not be obligated to make any payment hereunder at any time if a Default (as defined in Article 2 hereof) shall have occurred, whether or not it is continuing. Notwithstanding anything to the contrary herein expressed or implied, the parties hereto agree that the Vendor shall have no obligation with respect to the reconstruction of the Hulks and delivery of the Equipment hereunder to the Vendee except to the extent that the Builder has fully complied with the Builder's obligations with respect to such reconstruction and delivery.

It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 is specifically subject to the fulfillment, on or before each Closing Date, of the following conditions (any of which may be waived by the Vendee):

(a) the Vendor shall concurrently pay or cause to be paid to the Builder and the Railroad the amounts contemplated to be paid by it as provided in this Article 3 and the documents required by this Article 3 shall have been delivered;

(b) no Default (as defined in Article 2 hereof) or Event of Default (as defined in the Lease), nor any event which with lapse of time and/or demand provided in the Lease could constitute such an Event of Default, shall have occurred whether or not it is continuing; and

(c) the Vendee shall have received (i) the opinion of counsel required by Section 13 of the Lease and (ii) such other documents as the Vendee may reasonably request.

Notwithstanding any other provision of this Agreement, the Vendor agrees that the liability of the Vendee for all payments to be made by it under this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 and Article 19 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee (which term as used in this paragraph includes the Vendor to the extent payments under the Lease are made to the Vendor as contemplated therein and any assignee of the Vendee) shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity or enforceability of the Lease or any document relating thereto (except for the due authorization, execution and delivery thereof by the Vendee) or of any of the Railroad's obligations thereunder and (ii) shall have no obligation or liability whatsoever to see to or be responsible for the performance by the Railroad of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Railroad and the Equipment and to the Vendor's rights under the Lease against the Railroad and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee at any time after any such

event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee under the Lease or received by the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee and as shall be required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon, due and payable on, or on the business day after, the date such amounts received by the Vendee were required to be paid pursuant to the Lease or as shall be required to discharge any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or on the business day after, the date corresponding to the date on which amounts with respect thereto received by the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were due and payable under the Lease. Notwithstanding anything to the contrary contained in Articles 15 and 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment against the Vendee to such amounts. It is further agreed by the parties hereto that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Railroad, as guarantor, as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon.

ARTICLE 4. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and property in the Hulks delivered to the Builder hereunder for reconstruction and shall continue to retain such title during the entire period that the Hulks are being reconstructed and thereafter in the Equipment until the Vendee shall have made all its payments under this Agreement in respect of the Equipment and shall have kept and performed all its agreements herein contained in respect thereof, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the

Equipment to and the possession and use thereof by the Vendee and the Railroad as provided in this Agreement. Any and all additions to the Hulks and the Equipment, and any and all parts installed on and additions and replacements made to any unit of the Hulks or the Equipment shall constitute accessions thereto and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute and deliver to the Vendee a release of the Vendor's security interest in the Equipment transferring its security title thereto and property therein to the Vendee, free of all liens, security interests and other encumbrances created or retained hereby and (b) execute and deliver to the Vendee for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to such Equipment. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty or damages for failure to execute and deliver such release or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such release or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 5. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the

Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

**ARTICLE 6. Maintenance and Repair; Casualty Occurrences.**

The Vendee agrees that, at its own cost and expense, it will cause each unit of the Equipment to be maintained in good order and repair.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Vendee or the Railroad, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being herein called a Casualty Occurrence), the Vendee shall, within ten days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Vendee may receive notice thereof under the Lease), cause the Vendor to be fully informed in regard thereto. Notwithstanding any such Casualty Occurrence, the Vendee shall continue making payment of all instalments of principal and interest in respect of such unit until the date on which the Lessee is required to make payment for such Casualty Occurrence pursuant to the Lease (or, if the Lease is not in effect, on the date corresponding to such date). On such date the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 6) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date that such Casualty Value is paid to prepay the Conditional Sale Indebtedness in respect of the unit suffering the Casualty Occurrence, and the Vendee will promptly furnish to the Vendor and the Railroad a revised schedule of payments of principal and interest thereafter to be made, in such

number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Conditional Sale Indebtedness remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of Conditional Sale Indebtedness made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the units of Equipment.

ARTICLE 7. Obligations of Railroad, as Guarantor. The Railroad, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of the Conditional Sale Indebtedness and interest thereon, and the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement (except for the sums payable by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 3 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder.

The Railroad agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity or enforceability of this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of

the last paragraph of Article 3 hereof or Article 22 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Railroad hereunder.

In the event that the Railroad shall make any payments to the Vendor on account of its guaranty hereunder, the Railroad agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Railroad; provided, however, that after the payment to the Vendor of all sums payable under this Agreement, the Railroad shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment by the Railroad, to the extent, but only to the extent, that the Vendee has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 3, of sums payable by the Vendee to the Vendor hereunder.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 180 days from the date of this Agreement, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as of the preceding December 31 the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, such Equipment is marked as required by Article 9 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or, in the case of Equipment not there listed, such identifying number as shall be

set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of a new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Railroad or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Federal Railroad Administration, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, and in the event that such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner

which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Railroad as permitted by, and for use as provided in, the Lease, but the rights of the Railroad and its permitted assigns (the Railroad hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Railroad shall not be in default under the Lease or under this Agreement in its capacity as guarantor or otherwise, the Railroad shall be entitled to the possession and use of the Equipment. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Railroad or served by the Railroad upon it in connection therewith. The Vendee and the Railroad hereby agree that the Lease shall not be amended without the prior written consent of the Vendor, which shall not be unreasonably withheld.

Subject to the provisions of the preceding paragraph of this Article 11, the Equipment may be used upon the lines of railroad owned or operated by the Railroad or any affiliate of the Railroad (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Railroad or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Railroad or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic or equipment, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Vendee shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. Except as otherwise provided in the Lease, the Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside

the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by any appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessment or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains in the Vendor or the transfer or release of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Railroad or the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance or release of security title to, the Equipment, as provided in the last paragraph of Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Vendor makes no warranties whether written, oral, statutory or implied, including the warranties of merchantability or fitness for a particular purpose, with respect to the Hulks or the Equipment or in connection with this Agreement or the delivery and sale of the Equipment hereunder.

The Builder and the Railroad warrant that the Hulks will be reconstructed in accordance with the Specifications and standards set forth or referred to in Article 1 hereof and warrant that the Equipment will be free from defects in material or workmanship or design under normal use and service. This warranty is expressly in lieu of all other warranties, with respect to reconstruction, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose. The Builder agrees to and does hereby, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendor and, subject to the rights of the Vendor under this Agreement, to the Vendee, every claim, right and cause of action which the Builder has or hereafter shall have against any party who shall perform any of the reconstruction of the Hulks and the Builder agrees to execute and deliver to the Vendor and the Vendee all and every such further assurance as may be reasonably requested more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action.

The warranties and indemnities contained or referred to in this Article 13 and in any other Articles hereof and all other covenants and obligations of the Builder and the Railroad contained in this Agreement shall inure to the benefit of, and be enforceable by, any lessee, assignee or transferee of this Agreement or of any units of the Equipment reconstructed by the Builder hereunder.

The Railroad agrees to indemnify and save harmless the Vendor and the Vendee against any charge or claim made against either of them and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Vendor or the Vendee may incur in any manner by reason of entering into or performing the Hulk Purchase Agreement, this Agreement, any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, reconstruction, use, operation, condition, delivery, rejection, storage or return of, any of the Hulks or any units of the Equipment and to indemnify and save harmless the Vendor and the

Vendee against any charge, claim, expense, loss or liability on account of any accident in connection with the reconstruction, operation, use, condition, possession or storage of any of the Hulks or any units of the Equipment resulting in damage to property or injury or death to any person. The indemnities contained in this Article shall survive delivery of the Equipment and the performance of all other obligations under this Agreement and the Hulk Purchase Agreement and the termination of this Agreement and/or the Hulk Purchase Agreement.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including without limitation, rights and remedies against the Vendee and the Railroad) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Railroad hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to reconstruct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof or relieve the Vendee or the Railroad of their respective obligations contained or referred to in Articles 1, 2, 3, 5, 7 and 13 hereof and this Article 14, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Railroad, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing (without regard to the limitations provided for in the last paragraph of Article 3 hereof or in Article 22 hereof) to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for ten days; or

(b) the Vendee or the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Vendee, any Beneficiary or the Railroad under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations,

arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Railroad or the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Vendee, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or the Vendee, as the case may be, or for their respective property in connection with any such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Railroad (i) subject to the rights of the Railroad set forth in Article 11 hereof, cause the Lease immediately upon such notice to terminate (and the Vendee and the Railroad each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in the sixth paragraph of Article 3 hereof, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the limitations of Article 3 hereof, or the Railroad wherever situated. The Vendee and the Railroad agree to promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this

paragraph, it is expressly understood and agreed by the Vendee and the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Railroad set forth in Article 11 hereof, and upon such further notice and action, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Railroad or any other person and for such purpose may enter upon the premises of the Vendee or the Railroad or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall (subject to the rights of the Railroad set forth in Article 11 hereof), at its own expense forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Railroad requiring specific performance hereof. The Vendee and the Railroad hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment

as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Railroad may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Railroad and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Railroad set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Railroad or any other party claiming from, through or under the Vendee or the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the

Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Railroad shall not otherwise alter or affect the Vendor's rights or the Vendee's or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due

hereunder shall not be deemed to alter or affect the Vendee's or the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the limitations of Article 3 hereof, pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid first to the Vendee to the extent of the Vendee's interest therein, and then to the Railroad, to the extent of its interest therein.

The Vendee will, subject to the limitations of Article 3 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Railroad, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendee and the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Payment of Expenses. The Vendee will pay all reasonable costs and expenses incident to this Agreement and the first assignment of this Agreement if the first assignee is acting as agent or trustee (including the fees and expenses of such agent or trustee) and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the Vendor.

ARTICLE 20. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including any schedules or annexes hereto, exclusively and completely states the rights of the parties hereto with respect to the Hulks and the Equipment and supersedes all other agreements, oral or written, with respect to the Hulks and the Equipment except the Hulk Purchase Agreement. No variation or modification of this Agreement, the Lease or the Trust Agreement and no waiver of any of the provisions thereof or conditions thereto shall be valid unless in writing and signed by duly authorized representatives of the parties hereto.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its place of business at the following specified addresses:

(a) to the Vendor, at 440 Lincoln Street, Worcester, Massachusetts 01605, Attention of Securities Division,

(b) to the Vendee, at P.O. Drawer 4625, Atlanta, Georgia 30302, Attention of Corporate Trust Department,

(c) to the Railroad or the Builder at 908 West Broadway, Louisville, Kentucky 40201,

(d) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Railroad, by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Investment Representation. The Vendor represents that it is acquiring its entire participation in the Conditional Sale Indebtedness for its own account for investment and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

The interest of the Vendor hereunder has not been registered under the Securities Act of 1933 and the Vendor agrees that it will not assign its interest hereunder unless such assignment would not require registration under said Act. The Vendor hereby agrees that any assignment authorized pursuant to the next preceding sentence of all or any part of its interest in the Conditional Sale Indebtedness shall be upon the express condition that the assignee thereof shall be bound by the terms of this Agreement.

ARTICLE 23. Immunities: Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the parties hereto solely by reason of the fact that such person is an incorporator, stockholder, director, or officer, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 6, the last paragraph of Article 14 and under Articles 5, 8, 9, 10, 12 and 13 hereof shall be deemed in all respects satisfied by the Railroad's undertakings contained in the Lease. The Railroad shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Railroad's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Railroad's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee, while in form purporting to be the representations, undertakings and agreements of the Vendee are nevertheless each and every one of them, made and intended not as personal representations, undertakings and agreements by the Vendee or for the purpose or with the intention of binding the Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Vendee not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee or the Beneficiaries on account of this Agreement or on account of any representation, undertaking or agreement of the Vendee or any Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to the Trust Estate for satisfaction of the same.

ARTICLE 24. Law Governing. The Vendee warrants that its chief place of business is located in the State specified in clause (b) of Article 21 and the terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of said State; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date set forth on the cover hereof, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

by STATE MUTUAL LIFE ASSURANCE  
COMPANY OF AMERICA,

by *James R. Calahan* <sup>NK</sup>  
Assistant Treasurer

[Corporate Seal]

Attest:

*John F. Kelly*  
Assistant Secretary

LOUISVILLE AND NASHVILLE  
RAILROAD COMPANY,

by *Robert F. [unclear]*  
Secretary-Treasurer

[Corporate Seal]

Attest:

*[unclear]*  
Assistant Secretary

L & N INVESTMENT CORPORATION,

by *[Signature]*  
~~Vice President~~  
Secretary-Treasurer

[Corporate Seal]

Attest:

*[Signature]*  
Assistant Secretary

TRUST COMPANY OF GEORGIA,  
as Trustee,

by *[Signature]*  
~~Vice President~~  
CORPORATE TRUST OFFICER

[Corporate Seal]

Attest:

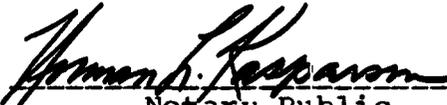
*[Signature]*  
Assistant Secretary

COMMONWEALTH OF MASSACHUSETTS)

) ss.:

COUNTY OF WORCESTER )

On this 2nd day of March 1973, before me personally appeared *Donald R. Calabro*, to me personally known, who, being by me duly sworn, says that he is an Assistant Treasurer of State Mutual Life Assurance Company of America, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
-----  
Notary Public

[Notarial Seal]

My Commission expires

NORMAN L. KASPARSON  
My Commission Expires January 31, 1975



COMMONWEALTH OF KENTUCKY )  
 ) ss.:  
COUNTY OF JEFFERSON )

On this *26th* day of *February*, 1973, before me personally appeared *C. Hayden Edwards*, to me personally known, who, being by me duly sworn, says that he is ~~Secretary~~ *President* of L & N Investment Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Virginia Stevenson*  
-----  
Notary Public

[Notarial Seal]

My Commission expires *March 19, 1976.*

STATE OF GEORGIA     )  
                               )     ss. :  
 COUNTY OF FULTON    )

On this *27th* day of *February* 1973, before me personally appeared *J. William Sam*, to me personally known, who, being by me duly sworn, says that he is a <sup>Corporate Trust Officer</sup> Vice President of Trust Company of Georgia, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*E. B. Benson*  
 \_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires

NOTARY PUBLIC, GEORGIA, STATE at LARGE  
 MY COMMISSION EXPIRES Aug. 17, 1974

SCHEDULE A

AAR		L&N Road		Base		Reconstruction		Purchase Price			
Quantity	Mechanical Designation	Designation	Numbers (Inclusive)	Specification	Delivery	Hulk Purchase Price Per Unit	Hulk Purchase Price Total	Cost Per Unit	Cost Total	Per Unit	Total
45	XL	50-ton, 40'6" box cars	90275-90319	Number 1004, dated December 15, 1972	Prior to June 29, 1973	\$2,583	\$ 116,235	\$4,200	\$ 189,000	\$6,783	\$ 305,235
81	XM	50-ton, 40'6" box cars	11260-11340	Number 1004, dated December 15, 1972	Prior to June 29, 1973	2,583	209,223	4,200	340,200	6,783	549,423
194	XL	50-ton, 50'6" box cars	109675-109868	Number 1004, dated December 15, 1972	Prior to June 29, 1973	2,583	501,102	4,200	814,800	6,783	1,315,902
100	XL	70-ton, 50'6" box cars	112000-112099	Number 1004, dated December 15, 1972	Prior to June 29, 1973	3,252*	325,180	4,200	420,000	7,452*	745,180
120	HT	80-ton open top hopper cars	189880-189999	Number 1005, dated December 15, 1972	Prior to June 29, 1973	9,757	1,170,840	4,800	576,000	14,557	1,746,840
							<u>\$2,222,580</u>		<u>\$2,340,000</u>		<u>\$4,662,580</u>

\* Average

TRANSFER AGREEMENT

State Mutual Life Assurance Company  
of America  
440 Lincoln Street  
Worcester, Massachusetts 01605.

The undersigned has recently acquired the used railroad equipment described in Annex I hereto (hereinafter called the Hulks) from Louisville and Nashville Railroad Company (hereinafter called the Railroad) and desires to have such Hulks reconstructed. The undersigned hereby agrees with you as follows:

1. In order to cause the Hulks to be reconstructed and sold to us by you on conditional sale, the undersigned hereby assigns and transfers to you, without warranties as to title or workmanship, security title to the Hulks and our rights under the Reconstruction Agreement dated as of December 1, 1972, between L&N Investment Corporation (hereinafter called the Builder) and us pursuant to which the Hulks are being reconstructed.

2. You will hold security title under and pursuant to the Reconstruction and Conditional Sale Agreement dated as of December 1, 1972 (hereinafter called the Agreement), among you, the Railroad, the Builder and us and you will request that the Hulks be reconstructed, pursuant thereto in accordance with the specifications referred to in Schedule A thereto. In accordance with the Agreement the undersigned has caused the Hulks to be delivered to the Builder on your behalf.

3. Upon completion of the reconstruction, the rebuilt Hulks will be delivered and conditionally sold by you to us in accordance with the Agreement.

4. If Hulks are excluded from the Agreement you shall reassign to us your interest in such Hulks, without warranty.

5. It is understood and agreed that this Agreement is being entered into solely to permit you to effectuate the foregoing and your interests in the Hulks, in present form or as reconstructed, is a security interest and that we shall at all times be the beneficial owner of the same.

If the foregoing is in accordance with your understanding, please sign a copy of this letter in the space provided and return it to the undersigned, whereupon this letter shall become a valid and binding agreement between us.

Very truly yours,

TRUST COMPANY OF GEORGIA, as Trustee,

by \_\_\_\_\_

[SEAL]

ACCEPTED:

STATE MUTUAL LIFE ASSURANCE COMPANY  
OF AMERICA,

by \_\_\_\_\_  
Assistant Treasurer



## ANNEX I

<u>Quantity</u>	<u>Description</u>	<u>I.&amp;N'</u> <u>Road Numbers</u>
126	50 ton 40'6" box cars,	
194	50 ton 50'6" box cars,	
120	80 ton open- top hopper cars,	
37	70 ton 50'6" box cars,	
36	70 ton 50'6" box cars,	
27	100 ton 48'6" box cars,	

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540

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1972

between

LOUISVILLE AND NASHVILLE  
RAILROAD COMPANY

and

TRUST COMPANY OF GEORGIA,  
as Trustee

LEASE OF RAILROAD EQUIPMENT, dated as of December 1, 1972, between LOUISVILLE AND NASHVILLE RAILROAD COMPANY (hereinafter called the Lessee) and TRUST COMPANY OF GEORGIA (hereinafter called the Lessor) as Trustee under a Trust Agreement dated as of the date hereof with Liberty National Bank and Trust Company of Louisville and First Tennessee Leasing Corporation, as beneficiaries (hereinafter individually called a Beneficiary and together the Beneficiaries).

WHEREAS the Railroad, the Lessor, L & N Investment Corporation (hereinafter called the Builder) and State Mutual Life Assurance Company of America (hereinafter called the Vendor) have entered into a Reconstruction and Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation), wherein the Vendor has agreed to sell to the Lessor its interest in the railroad equipment described in Schedule A hereto after it has been reconstructed by the Builder; and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Security Documentation on or prior to the Cut-Off Date (as defined in Article 2 of the Security Documentation) (such units being hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Documentation, subject to all the rights and remedies of the Vendor under the Security Documentation:

Section 1. Delivery and Acceptance of Units. The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and the Builder a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

Section 2. Rental. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 21 consecutive semiannual payments payable on May 1 and November 1 in each year, commencing November 1, 1973 (or if any such date is not a business day, on the next succeeding business day). The first such payment shall be in an amount equal to .035814% of the Purchase Price (as defined in the Security Documentation) of each Unit for each day elapsed from and including the date such Unit is settled for under the Security Documentation to November 1, 1973. The remaining payments shall each be in an amount equal to 6.44646% of the Purchase Price of each Unit subject to this lease.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in New York clearing house funds for the account of the Lessor, care of the Vendor at Account Number 04-5969, The Bank of New York, 48 Wall Street, New York, New York 10005, attention of Collection Department, for the purpose of and to the extent necessary to satisfy the obligations of the Lessor under the Security Documentation due and payable on, or on the business day after, the date such payments are due hereunder and, so long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the Security Documentation shall have occurred and be continuing, any balance shall be paid by the Lessee to the Lessor (otherwise such balance shall be paid to the Vendor).

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, including the Lessee's rights by subrogation under Article 7 thereof, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein

provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

Section 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder or under the Security Documentation in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Documentation (in its capacity as guarantor or otherwise). If a Declaration of Default (as defined in the Security Documentation) should be made under the Security Documentation due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Security Documentation as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 16 of the Security Documentation that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

Section 4. Identification Marks. The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the identifying number set forth in Schedule A to the Security Documentation and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor

under this Lease and of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited by the Lessee in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

Section 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state or city, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by

reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Documentation. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 5 of the Security Documentation not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

Section 6. Payment for Casualty Occurrences. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being hereinafter called a Casualty Occurrence) during the term of this Lease, the Lessee shall, within ten days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. Notwithstanding any such Casualty Occurrence, the Lessee shall continue making all payments provided for in this Lease in respect of such Unit until the May 1 next succeeding such notice. On such date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such May 1 in accordance with the schedule set

out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit shall be determined by multiplying the Purchase Price of such Unit by the applicable percentages set forth opposite each date in the following schedule:

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u> -----	<u>Rental Payment Date</u> ---	<u>Percentage of Purchase Price</u> -----
May 1, 1974	104.1613%	May 1, 1980	53.0270%
May 1, 1975	98.5166	May 1, 1981	47.0885
May 1, 1976	90.7555	May 1, 1982	31.7248
May 1, 1977	85.9628	May 1, 1983	20.7198
May 1, 1978	73.0583	May 1, 1984,	
May 1, 1979	67.6813	and thereafter	15.0000

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

Section 7. Annual Reports. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 180 days after the date of this Lease, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder and/or covered by the Security Documentation, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such

statement, the markings required by Section 4 hereof and Article 9 of the Security Documentation shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

Section 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Federal Railroad Administration and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws and rules so long as it is subject to this Lease; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Security Documentation.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documentation or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

Section 9. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documentation and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed,

nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Documentation and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Documentation), and unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Documentation shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to

recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of 7 3/4% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) an amount which, after (A) deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, calculated on the assumption that the Lessor's federal, state and local taxes computed by reference to net income or excess profits are based on the highest corporate Federal, state and local income tax and/or excess profit tax rates, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and computing any such Federal tax by deducting 48% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Lease called the Assumed Rates) and (B) taking into account the effect to the Lessor of any increased rentals theretofore paid or then determined to be payable pursuant to Section 14 hereof, shall be equal to any portion of the Investment Credit (as defined in Section 14 hereof), lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default plus such sum, as in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Depreciation Deductions and Interest Deductions (both as defined in Section 14 hereof) which were lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the breach of one or more of

the representations, warranties and covenants made by the Lessee in this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default; and (iii) all amounts, other than rentals, payable by the Lessee under any provision of this Lease and all damages and expenses, including reasonable attorneys' fees in addition thereto which the Lessor shall have sustained by reason of the breach of one or more of the representations, warranties and covenants (other than the covenant to pay rentals) made by the Lessee in this Lease (and from time to time after the date of such termination the Lessor may recover from the Lessee any and all additional such amounts, damages and expenses which may be payable by the Lessee or incurred or sustained by the Lessor), provided, however, that damages payable under clauses (i) and (ii) of this paragraph shall be in lieu of all other damages in respect of rentals and the loss of tax benefits payable pursuant to this Section 9(b).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 10. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

Section 11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 5, 6, 9 and 14) shall inure to the benefit of the Beneficiaries and of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to the Beneficiaries and to each such assignee of the Lessor and, where the context so requires (including but not limited to certain of the provisions of Section 9 and all of the provisions of Section 14), shall refer only to the Beneficiaries or such assignees.

So long as the Lessee shall not be in default under this Lease or under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance

with the terms of this Lease and the Security Documentation, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge or cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor after the date hereof or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit, including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease or under the Security Documentation, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon the lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic and equipment, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this Section 11, and the Security Documentation. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation with which the Lessee is now affiliated (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documentation) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

Section 12. Return of Units upon Expiration of Term; Renewal Option; Right of First Refusal. The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit but in any event not later

than 90 days after such expiration, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor, the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. The Lessee shall advise the Lessor of the Units, if any, which have suffered a Casualty Occurrence as of the expiration of the Lease and if the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which within three months after the expiration of this Lease the Lessor shall elect to abandon, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit so abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to Section 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may elect, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, to extend the term of this Lease in respect of all, but not fewer than all, the Units covered by this Lease at the end of each term for additional one-year periods, provided that no such extended term shall extend beyond November 1, 1985,

at a rental payable in semiannual payments, in an amount equal to the "Fair Market Rental" of such Units as of the commencement of such extended term, such semiannual payments to be made on May 1 and November 1 in each year of the applicable extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such value shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell such Units, or one of them, unless the Lessor shall have given the Lessee at least 30 business day's prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice.

Section 13. Opinion of Counsel. On each Closing Date (as defined in the Security Documentation), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same), with adequate corporate power to enter into the Security Documentation and this Lease;

B. the Security Documentation and this Lease have been duly authorized, executed and delivered by the Lessee and constitute a valid, legal and binding agreement of the Lessee, enforceable in accordance with their terms;

C. the Security Documentation and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; and such filing, recording and deposit will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor and the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Documentation or this Lease;

E. the entering into and performance of the Security Documentation or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or the Lessor's right, title and interest therein.

Section 14. Federal Income Taxes. The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits or other benefits as are provided by the Code (as defined in Section 9 of this Lease), to an owner of property, including (without limitation) an allowance for the 7% investment credit attributable to the reconstructed basis of the equipment (hereinafter called the Investment Credit) and the depreciation deduction authorized with respect to a unit under Section 167 of the Code utilizing the "class lives" and "asset depreciation ranges" prescribed in accordance with Section 167(m) of the Code for an asset described in Asset Guideline Code No. 40.21 as described in Revenue Procedure 72-10, 1972, IRB8 (hereinafter called the Depreciation Deduction) with respect to the Units.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time during the term of this Lease or any extended term thereof take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take

such action and execute such documents, and keep and make available for inspection and copying by the Lessor such records, as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

The Lessee represents and warrants that (i) none of the portion of the basis of the Units attributable to reconstruction constitutes property, the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the Owner of the Units, that portion of the Purchase Price of the Units attributable to reconstruction (such amount being the Purchase Price of the Units less that portion thereof attributable to the Hulks as specified in Schedule A to the Security Documentation) will qualify as "new Section 38 property" within the meaning of Section 48(b) of the Code; (iii) at the time the Lessor becomes the owner of the Units, that portion of the basis of the Units attributable to reconstruction will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c) (2) of the Code from commencing with the Lessor; (iv) at the time the Lessor becomes the owner of the Units, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect to the portion of the basis of the Units attributable to reconstruction; and (v) at all times during the term of this Lease, that portion of the basis of the Units attributable to reconstruction will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

If for any reason (including the inaccuracy in law or fact of the assumptions set forth above or the repeal, modification, amendment or other change of or to any law or any regulation issued thereunder or any other reason, whether similar or dissimilar to the foregoing, except as a direct result of the occurrence of any Excluded Event set forth below) prior to the Lessor's obtaining a favorable ruling (hereinafter called the Ruling) from the Internal Revenue Service as to the Lessor's being the owner of the Units and as to the Lessor's right to claim the Investment Credit, the Depreciation Deductions (without reference to the asset depreciation period) and the interest deductions with respect to interest payments made pursuant to the Security Documentation in accordance with, and subject to the limitations contained in, Section 163 of the Code (hereinafter called the Interest Deduction), the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture, all or any portion of the Investment Credit, the Depreciation Deductions, or the Interest Deduction (hereinafter each called a Benefit) with respect to all or part of any Unit, then the rental rate applicable to such Unit set forth in Section 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Benefit has

not been claimed, or (if claimed and then disallowed or required to be recaptured) on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect to such Unit under this Lease to equal the net return in respect of such Unit under this Lease that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the disallowance, recapture or loss of all or any portion of the Benefit; provided, however, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Benefit with respect to all or part of such Unit as a direct result of the occurrence of any of the following events (hereinafter called Excluded Events):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 6 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit (except the transfer or disposition contemplated by the Transfer Agreement or the subjection of the Units to the Security Documentation) or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease (except as provided in Section 2 hereof) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Hulk Purchase Agreement, the Transfer Agreement (as such documents are defined in the Security Documentation) or the Security Documentation without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the Investment Credit, the Depreciation Deductions or the Interest Deduction, as applicable, in its federal income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming any Benefit; or

(v) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the Depreciation Deductions or the Interest Deduction, as applicable.

The Lessor agrees that it will apply for and diligently seek the Ruling.

Anything to the contrary in this Section 14 notwithstanding, the Lessee understands that the rental rate provided in Section 2 hereof has been calculated on the basis of Depreciation Deductions in respect to the Units being available on the basis of an 11-year life on one of the accelerated methods of depreciation provided in Section 167(b) of the Code. If such Depreciation Deductions are disallowed at any time because such deductions may only be taken on the basis of a 12-year life, the rental rate for the Units set forth in Section 2 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount as shall, in the reasonable opinion of the Lessor, equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize such 11-year life as distinguished from a 12-year life and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest that may be assessed by the United States against the Lessor attributable to the utilization of such 11-year life as distinguished from a 12-year life.

The Lessor agrees that if, in the opinion of Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of any Benefit (with respect to part or all of any Unit) exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax and interest paid attributable to the Benefit disallowed, required to be recaptured or lost, which interest shall be computed at the rate of 7 3/4% per annum from the date of payment of such tax and interest to the date the Lessee shall reimburse the Lessor for such tax and interest in accordance with the provisions of this Section 14. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

Section 15. Recording; Expenses. The Lessee will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate

Commerce Act. The Lessee will undertake the filing, recording and depositing and refiling, re-recording and redepositing required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the Security Documentation; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor will pay or cause to be paid the reasonable costs and expenses involved in the preparation and printing of this Lease and the Lessee will pay the reasonable costs and expenses involved in the recording of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

Section 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations when due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 8 3/4% per annum of the overdue rentals for the period of time during which they are overdue.

Section 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at P.O. Drawer 4625  
Atlanta, Georgia 30302

if to the Lessee, at 908 West Broadway  
Louisville, Kentucky 40201

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

Section 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction,

ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

Section 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although this Lease is dated as of the date first set forth above for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

TRUST COMPANY OF GEORGIA,  
as Trustee,

by

[Corporate Seal]

-----  
Vice President

Attest:

-----  
Assistant Secretary

LOUISVILLE AND NASHVILLE  
RAILROAD COMPANY,

by

-----  
Secretary-Treasurer

[Corporate Seal]

Attest:

-----  
Assistant Secretary





## SCHEDULE A

<u>Quantity</u>	<u>AAR Mechanical Designation</u>	<u>Description</u>	<u>L&amp;N Road Numbers (inclusive)</u>
45	XL	50-ton, 40'6" box cars	90275-90319
81	XM	50-ton, 40'6" box cars	11260-11340
194	XL	50-ton, 50'6" box cars	109675-109868
100	XL	70-ton, 50'6" box cars	112000-112099
120	HT	80-ton open top hopper cars	189880-189999

## CERTIFICATE OF INTEREST

STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA (hereinafter called the Investor) has made payment in the amount of

\$

in respect of the purchase price of certain railroad equipment under and pursuant to the terms and conditions of a Reconstruction and Conditional Sale Agreement dated as of December 1, 1972 (hereinafter called the Conditional Sale Agreement), among the Investor, LOUISVILLE AND NASHVILLE RAILROAD COMPANY, L & N INVESTMENT CORPORATION and the undersigned.

By reason of such payment, the Investor has an interest in a principal amount equal to such sum in the Conditional Sale Agreement and the railroad equipment covered thereby. Under and subject to the terms of the Conditional Sale Agreement and subject to the rights of prepayment contained therein in the event of a Casualty Occurrence (as defined therein) (i) such principal is payable in consecutive semiannual instalments on May 1 and November 1 in each year commencing May 1, 1974, to and including November 1, 1983, (ii) such principal amount bears interest, payable semiannually, on the unpaid portion thereof from time to time outstanding, on May 1 and November 1 of each year commencing November 1, 1973, at the rate of 7-3/4% per annum, and (iii) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest at the rate of 8-3/4% per annum or such lesser amount as may be legally enforceable. The undersigned has or promptly will furnish to the Investor a schedule of payments reflecting the dates and amounts of principal and interest payments to be made under the Conditional Sale Agreement.

Dated: \_\_\_\_\_

as Trustee

TRUST COMPANY OF GEORGIA,

By

-----  
Authorized  
Officer